U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 9731182

Date: NOV. 27, 2020

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Extraordinary Ability)

The Petitioner, an information technology professional, seeks classification as an individual of extraordinary ability. See Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Director of the Nebraska Service Center denied the petition, concluding that although the Petitioner satisfied three of the initial evidentiary criteria, as required, he did not show sustained national or international acclaim and demonstrate that he is among the small percentage at the very top of the field of endeavor. The Director further determined that the Petitioner did not establish that he is coming to the United States to continue work in his area of extraordinary ability.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. See Section 291 of the Act, 8 U.S.C. § 1361. Upon de novo review, we will dismiss the appeal.

I. LAW

Section 203(b)(1)(A) of the Act makes visas available to immigrants with extraordinary ability if:

(i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,

(ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and

(iii) the alien's entry into the United States will substantially benefit prospectively the United States.

The term "extraordinary ability" refers only to those individuals in "that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2). The implementing regulation at 8 C.F.R. § 204.5(h)(3) sets forth a multi-part analysis. First, a petitioner can demonstrate international recognition of his or her achievements in the field through a one-time achievement (that is, a major, internationally recognized award). If that petitioner does not submit this evidence, then he or she must provide sufficient qualifying documentation that meets at least three of the ten criteria listed at 8 C.F.R. § 204.5(h)(3)(i) – (x) (including items such as awards, published material in certain media, and scholarly articles).

Where a petitioner meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination and assess whether the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor. See Kazarian v. USCIS, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination); see also Visinscaia v. Beers, 4 F. Supp. 3d 126, 131-32 (D.D.C. 2013); Rijal v. USCIS, 772 F. Supp. 2d 1339 (W.D. Wash. 2011).

II. ANALYSIS

The Petitioner is an information technology professional who specializes in Cloud computing and e-mail security technology. The record reflects that he has worked for [redacted], a leading network security company, at its [redacted] since 2001. He indicates that he intends to establish his own IT consulting company in the United States.

A. Evidentiary Criteria

Because the Petitioner has not indicated or established that he has received a major, internationally recognized award, he must satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). The Director found that the Petitioner met three of the evidentiary criteria relating to published materials in major media at 8 C.F.R. § 204.5(h)(3)(iii), scholarly articles at 8 C.F.R. § 204.5(h)(3)(vi), and leading or critical roles at 8 C.F.R. § 204.5(h)(3)(viii). Although the Director found that the Petitioner satisfied the initial evidence requirements, he concluded in the final merits determination that the record did not establish that he had the sustained national or international acclaim required for this classification.

The record reflects that the Petitioner has been the subject of two articles published in major Chinese media, authored several scholarly articles in professional publications, and performed in a critical role for [redacted] which enjoys a distinguished reputation in its industry. Accordingly, we will not disturb the Director's determination that the Petitioner met three criteria.

On appeal, the Petitioner asserts that the Director erred in determining that he did not also meet the criteria relating to lesser nationally recognized awards and original contributions of major significance. See 8 C.F.R. § 204.5(h)(3)(i) and (v). Because the Petitioner has shown that he satisfies three criteria,

we will evaluate his claims regarding these two additional criteria in reviewing the totality of the evidence in the context of the final merits determination below.[1]

B. Final Merits Determination

As the Petitioner submitted the requisite initial evidence, we will evaluate whether he has demonstrated, by a preponderance of the evidence, his sustained national or international acclaim, that he is one of the small percentage at the very top of the field of endeavor, and that his achievements have been recognized in the field through extensive documentation. In a final merits determination, we analyze a petitioner's accomplishments and weigh the totality of the evidence to determine if his successes are sufficient to demonstrate that he has extraordinary ability in the field of endeavor. See section 203(b)(1)(A)(i) of the Act; 8 C.F.R. § 204.5(h)(2), (3); see also Kazarian, 596 F.3d at 1119-20.[2] In this matter, we conclude that the Petitioner has not shown his eligibility.

The record reflects that the Petitioner began his career in the 1990s with [redacted] and has been employed by [redacted]s [redacted] in [redacted] China since 2001. According to an employment certificate provided by the company, he currently works as a research and development director in the Department of Foundation Software Development responsible for email security software products. The Petitioner did not submit a copy of his curriculum vitae or copies of his educational credentials, but we note that other evidence in the record indicates that he has a bachelor's degree in chemistry and a master's degree in software engineering from [redacted] University. The Petitioner also provided a certificate from the Project Management Institute awarding him a "Project Management Professional (PMP)" credential.

As mentioned above, the Petitioner has submitted evidence of published materials about him, evidence that he authored scholarly articles in professional publications, and evidence of his critical role with [redacted] The Petitioner also emphasizes his contributions to industry awards received by his employer and his original contributions to his field. The record, however, does not demonstrate that his achievements reflect a "career of acclaimed work in the field" as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990).

Regarding published materials, the Petitioner submitted an article titled [redacted] published by www.sohu.com, and an article titled [redacted] published online at tech.china.com and sourced from china.prcfe.com. Both articles, which are similar in content and provide details regarding the Petitioner's projects at [redacted] were published in [redacted] 2019, approximately two months prior to the filing of the petition. While the Director determined that the articles were about the Petitioner and published in major media, he emphasized that both articles are very recent and therefore do not

[1] See USCIS Policy Memorandum PM 602-0005.1, Evaluation of Evidence Submitted with Certain Form I-140 Petitions; Revisions to the Adjudicator's Field Manual (AFM) Chapter 22.2, AFM Update AD11-14 13 (Dec. 22, 2010), https://www.uscis.gov/policymanual/HTML/PolicyManual.html (providing that objectively meeting the regulatory criteria in part one alone does not establish that an individual meets the requirements for classification as an individual of extraordinary ability under section 203(b)(1)(A) of the Act).

[2] Id. at 4 (instructing that USCIS officers should then evaluate the evidence together when considering the petition in its entirety to determine if the petitioner has established by a preponderance of the evidence the required high level of expertise of the immigrant classification).

establish that he has garnered sustained national acclaim in the form of media recognition for his achievements. The Director also noted that only two articles were provided, noting that this classification is intended for those "whose achievements have been recognized through extensive documentation." Section 203(b)(1)(A)(i) of the Act.

On appeal, the Petitioner emphasizes that it is a "rare achievement" for an employee of a technology company to be deemed a subject worthy of national media coverage, and argues that the Director should have focused on the quality of the evidence, rather than the quantity. However, the Director did not solely focus on the quantity of evidence submitted. The Director also emphasized that the only evidence of published materials was very recent and for that reason did not support a determination of sustained acclaim, an observation that is not addressed by the Petitioner on appeal.

While we acknowledge evidence that the articles were published on popular Chinese media portals, the Petitioner has not adequately supported his claim that it is "rare" for an individual in his field to receive media recognition or that any such recognition indicates that he is among that small percentage at the very top of the field. Both articles detail the Petitioner's academic and professional background and career progression within [redacted] they do not convey how he has already been recognized in the industry based on his achievements to date. Finally, we agree with the Director that the Petitioner did not establish that the publication of two articles just prior to the filing of this petition is indicative of his "career of acclaimed work in the field" as contemplated by Congress. See H.R. Rep. No. at 59 and section 203(b)(1)(A) of the Act.

The Director acknowledged that the Petitioner provided evidence that he had authored six articles published in professional publications between 1996 and 2019. Publication of research does not automatically place an individual at the top of the field. The Director determined that the Petitioner did not provide evidence differentiating his publication rate from that of others in his field, or otherwise establish that publication of six articles over a period of 23 years is indicative of his standing among the small percentage at the very top of his field of endeavor. See 8 C.F.R. § 204.5(h)(2).

On appeal, the Petitioner states that his "important academic papers should be evaluated in the context of his significant accomplishments in applying theory to real-world practice," noting that since he has spent his career in industry rather than academia, his publication record can "lend strong support" to his eligibility for this classification. While we acknowledge the Petitioner's assertion that his overall publication rate should not be compared to those in researchers working strictly in academic settings, we note that he offers no other reference point for comparison.

Nevertheless, we have not solely evaluated the number of papers published by the Petitioner. The Petitioner's citation history or other evidence of the influence of his articles can be an indicator to determine the impact and recognition that his work has had on the field and whether such influence has been sustained. For example, numerous independent citations for an article authored by the Petitioner may provide solid evidence that his work has been recognized and that other researchers have been influenced by his work. Such an analysis at the final merits determination stage is appropriate pursuant to Kazarian, 596 F. 3d at 1122. Of the Petitioner's six publications, he provided evidence that three of them have been cited by others. Specifically, he provided evidence that they have been cited 18, 8 and 2 times, respectively. While the citations to the Petitioner's publications, both individually and collectively, show that the field has noticed his work, he did not establish that

such rates of citation demonstrate a level of interest in his field commensurate with sustained national or international acclaim. See section 203(b)(1)(A) of the Act. Moreover, the Petitioner did not show that the citations to his research represent attention at a level consistent with being among small percentage at the very top of his field. See 8 C.F.R. § 204.5(h)(2). Finally, while the Petitioner submitted letters from two professors at [redacted] University praising his 2013 article published in Journal of Computer Applications, neither individual explains how the publication of this paper, or the [redacted] product(s) that incorporated his research, resulted in any individual recognition to the Petitioner or contributed to his sustained acclaim in his field.

With respect the Petitioner's roles with [redacted], [redacted] a senior vice president with the company, highlights the Petitioner's two most recent positions, noting that prior to his current position, he led the research and development team responsible for the [redacted] which included: [redacted] describes the Petitioner as the "technical backbone and team leader" of the project and as "a major contributor for the smooth release" of the team's products, noting that this software received multiple awards in 2006. He further explains that, since 2011, the Petitioner has served as a research and development director leading a team responsible for developing the company's email security software including [redacted] He explains the Petitioner's technical contributions and highlights the market leading position of these products as ranked by industry publications such as IDC MarketScape. In a second statement, [redacted] describes some of the Petitioner's contributions to the company's technologies in more detail, noting that he has been responsible for the ongoing development of products and services that generate tens of millions of dollars in software sales annually.

While the Director determined that this evidence was sufficient to establish the Petitioner's critical role with the company, the record does not reflect that the Petitioner's employment at [redacted] has garnered him individual recognition outside of the company at a level consistent with sustained national or international acclaim. His employer has acknowledged his contributions with internal awards, including a "Successful Launch Award" in 2002, two "Product Delivery Excellence" awards in 2003, and an "SaaS Excellence Award" in 2011. On appeal, the Petitioner asserts that the Director did not give sufficient weight to evidence that he directly contributed to the company's receipt of several industry awards in [redacted] including a PC Magazine "Best Product" award for [redacted] a CPW magazine award for [redacted] and a Software World magazine Golden Software Award for [redacted].

The letters from [redacted] indicate that the [redacted] developed some of these products under the Petitioner's leadership, but the evidence as a whole does not establish that the company or the awarding entities acknowledge the Petitioner to be the recipient of these industry awards received by [redacted] or deem the awards to be directly attributable to his work. The Petitioner's contributions to these and other successful [redacted] products substantiate his claim that he has served in a critical role for the company. However, even if we deemed the Petitioner to be the recipient of these awards as claimed, the record as a whole does not support a conclusion that his efforts resulted in his sustained national or international acclaim or that he is recognized in the industry as being among the small percentage at the very top of the field as a result of his contributions to these products.

The Petitioner also argues on appeal that he established that he has made original contributions of major significance in his field, emphasizing his role in developing [redacted] products that "reach millions of users worldwide, including most of the largest corporations in the world." The record includes a letter from [redacted] a professor at [redacted] University, who states that the [redacted] product developed under the Petitioner's leadership at [redacted] was "one of the earliest micro-service-based systems in the industry to be put into actual commercial operation," and notes that it was the topic of the Petitioner's master's thesis research and his 2013 paper published in the Journal of Computer Applications. [redacted], who was the Petitioner's thesis advisor at [redacted] University, discusses this same research in his letter, noting that the micro-service architecture the Petitioner proposed is based on "four principles of system design" which "not only had a breakthrough in theory, but also has been well validated in the actual development and deployment." However, the record does not establish how this research, [redacted]'s product, or the related published article (which had been cited eight times in six years) had a significant impact or influence in the field or how it has garnered the Petitioner the requisite sustained national or international acclaim in the industry.

The record reflects that the Petitioner has been named as a co-inventor on one U.S. patent application at [redacted] filed in [redacted] 2019. [redacted] describes this invention as "[redacted] email technology [the Petitioner] developed based on computer vision" which [redacted] with machine learning technology to distinguish [redacted] email, which improves the detection rate of [redacted] email by more than 10 times." He opines that the invention "surely will become an important technology in the field of [redacted] detection in the future" but does not address its current impact or influence on the field or indicate that it has already been recognized in the industry as a major contribution.

We have recognized [redacted]s distinguished reputation in its industry and acknowledge that its products are highly regarded and widely used, but we cannot determine based on the evidence submitted that the Petitioner's individual contributions to these products have been widely influential in the industry, that they have had a significant impact beyond his own employer and its customers, or that they have resulted in his sustained acclaim or placed him among the small percentage of individual at the very top of his field.

Finally, we acknowledge that three experts in the network security field have commented on the Petitioner's standing in this field. [redacted] describes the Petitioner as "an outstanding talent" and "a top researcher and developer" in the field of cloud computing and e-mail security and states that he is "an excellent person who can create tremendous economic value." [redacted] notes that the Petitioner "is a rare high-end cloud computing talent" whose software design experiences at [redacted] "have made him a leader in e-mail scanning analysis technical and distributed design." [redacted] who states that he served as the Petitioner's manager at [redacted] in the late 1990s, indicates that the Petitioner proved himself to be "a good leader" and "a technical genius" who has since "worked continuously at the forefront of network security." While the Petitioner has earned the praise of his colleagues and mentors, the letters do not provide sufficient information and explanation, nor does the record include sufficient corroborating evidence, to show that the Petitioner is viewed by the overall field as being among that small percentage at the very top of the field of endeavor. See 8 C.F.R. § 204.5(h)(2).

The record as a whole, including the evidence discussed above, does not establish the Petitioner's eligibility for the benefit sought. The Petitioner seeks a highly restrictive visa classification, intended for individuals already at the top of their respective fields, rather than those progressing toward the top. USCIS has long held that even athletes performing at the major league level do not automatically meet the statutory standards for classification as an individual of "extraordinary ability." Matter of Price, 20 I&N Dec. 953, 954 (Assoc. Comm'r 1994). While the Petitioner need not establish that there is no one more accomplished to qualify for the classification sought, we find the record insufficient to demonstrate that he has sustained national or international acclaim and is among the small percentage at the top of his field. See section 203(b)(1)(A)(i) of the Act; 8 C.F.R. § 204.5(h)(2).

Since the identified basis for denial is dispositive of the appeal, we decline to reach and hereby reserve the Director's separate determination that the Petitioner did not establish that he is coming to "continue work in the area of extraordinary ability" as required under section 203(b)(1)(A)(ii) of the Act. See INS v. Bagamasbad, 429 U.S. 24, 25 (1976) ("courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach"); see also Matter of L-A-C-, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

III. CONCLUSION

For the reasons discussed above, the Petitioner has not established his eligibility as an individual of extraordinary ability under section 203(b)(1)(A)(i) of the Act. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.